IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

Crl.Rev.Pet.No. 134 of 1999()

CRA.109/1997 of ADDL. SESSIONS COURT, THRISSUR
CC.286/1993 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD
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REVN. PETITIONERS/APPELLANTS/ACCUSED No.1 & 2:
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1. **P.T.AZEEZ, PANIKKAVEETTIL THEKKEAKAYIL, PANIKKAVEETTIL THEKKEAKAYIL, PERINGODE, KOOTTANADU.P.O., VIA. PATTAMBI.**

2. **P.T.AHAMMED, PANIKKAVEETTIL, THEKKEAKAYIL, PERINGODE, KOOTANADU.P.O., VIA PATTAMBI.**

BY ADV. SRI.P.VIJAYA BHANU
SRI.S.R.MANOJ

RESPONDENTS/RESPONDENT/COMPLAINANT:
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1. **FOOD INSPECTOR, MOBILE VIGILANCE SQUAD, KAKKANAD P.O., KOCHI.**

2. **STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI. AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON Crl.M.P.No.478/1999 IN Crl.R.P.No.134/1999

DISMISSED

13/07/2007 **Sd/- K.R.UDAYABHANU,JUDGE**

TRUE COPY

P.A.TO JUDGE

K.R.UDAYABHANU,J

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CRL.R.P.No.134 of 1999

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Dated this the 13th day of July,2007

ORDER

The revision petitioners are accused 1 and 2 in C.C.No.286/93 in the file of Judicial First Class Magistrate Court, Chavakkad with respect to the offences punishable under Sections 2(1) (a)(m), 7(1), 17(1) (a) (ii) and (b) and 16(1) (a)(i) of the Prevention of Food Adulteration Act on the allegation that the commodity purchased by the Food Inspector as coconut vinegar was found adulterated. The version of the revision petitioners/accused is that they are entitled to the protection of warranty under Section 19(2) of the Act. They had also submitted the bills of purchase, ie., Exts. D1 and D2 of M/s.MAK Food Products which according to them contained the warranty as stipulated under Rule 13(2).

2. The evidence adduced in the matter consisted of the testimony of PWs 1 to 4 and Exts.P1 to P26(a) and MO1 the empty bottle. The defence examined DW1, and got marked Exts D1 to D6. The manufacturers were also arrayed as the accused.

A3 and A4 were implicated as being the partners of A5 firm that manufactured the products. A3 still remains absconding. A4 was acquitted as found that he is only a sleeping partner. A1 and A2, the licensee of the shop and salesman, stand convicted for the offences and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.1,000/- each for the offence under Section 16(1) (a) (i) of the Prevention of Food Adulteration Act and in default to undergo simple imprisonment for two months.

3. PW1, the Food Inspector has admitted the submitting of Exts. D1 and D2 bills at the time when he entered the shop and purchased the alleged quantity of vinegar. The contention is that what has been purchased is coconut vinegar and in the bills it is not mentioned as coconut vinegar but as 750 ml.sin vinegar. I find that in the Mahazar there is no statement as to the fact that the bills did not contain the vinegar from which the sample was taken. I find that the findings of the court below in this regard cannot be upheld, in view of the fact that the Food Inspector has not raised any doubt with respect to the identity of the article and the one contained in the bill produced by the accused at the time. I find that the word Sin cannot be representative in sinthetic. In the circumstances, it has to be

taken that the commodity purchased by the Food Inspector is from the same set of articles purchased by the licensee as per Exts D1 and D2 bills. It is also mentioned that the bottle was sealed and labelled. In Exts. D1 and D2 bills there is a warranty signed by somebody and the warranty is in terms of the specification as per Rule 13(2). The Appellate court has held that the warranty is not exactly as contemplated in Form VI-A. I find that material part as incorporated in the cash bill is that "I/we hereby certify that the food/foods mentioned in this invoice is/are warranted to be of the nature and quality which it/these purports/purport to be." The counsel for the revision petitioner quoted the decision of the Supreme Court in **P.Unnikrishnan v. Food Inspector (Palghad) Municipality (A.I.R. 1995 (SC) 1983)** which supported the above proposition. There is no case that the manufacturers are not duly licensed etc.

In this circumstances, I find that the order of the court below is liable to be set aside. The revision petition is allowed and the accused are acquitted.

K.R.UDAYABHANU, JUDGE

dvs